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RELATIONSHIP DEBTS

The topic of today's newsletter is to discuss how relationship debts are treated on separation. As a general principle, a relationship debt is a debt incurred for the joint purposes of the marriage or the relationship.

Let's consider the situation of Jack and Jill. During the latter part of their marriage they found themselves under severe financial pressure. The recession was now starting to have an effect that Jack had recently been redundant. In order to alleviate that stress, Jack thought it would be a good idea if he went to Melbourne to watch the All Blacks play the Wallabies with some friends. Not having any cash, of course, he placed the cost of the trip and all his expenditure on his Visa Card. While he was away, Jill also needed some stress release therapy and she went out with a couple of friends on the Saturday night to the local casino. Jill was in the same position in that she had no spare cash and on the preceding Friday, she had gone to the Bank and obtained a cash advance on her Visa to pay for the evening out gambling.

Unfortunately, the stress release weekend did not have a long-lasting effect and Jack and Jill found themselves arguing on a regular basis to such an extent that they commenced counselling. During the period that Jack and Jill were attending counselling, Jack was approached by a mutual friend about investing in an investment property. Because he wasn't earning any money, the Bank declined to assist him, so he turned to his parents who made available an

interest free loan of \$50,000.00 for the venture. At the last counselling session, the counsellor recommended that in order to save their marriage, they should take a week's holiday in Fiji. Again the cost of the holiday was placed on their joint Visa Card. Upon their return, the marriage was in further decline to such an extent that they agreed to separate permanently.

The question for the lawyers then, of course, was how to treat the debts? Clearly all relationship property would be divided equally, it being a marriage in excess of three years. However, were all the outstanding loans/debts also to be treated equally? This is how s20 of the Property (Relationships) Act 1976 works:

- (a) The Bledisloe Cup trip undertaken by Jack was not for the joint purposes of the marriage, but for his own personal pleasure. He didn't go away with Jill, but with his mates and, as such, this was held to be his personal debt and he was responsible for its payment without any contribution from Jill;
- (b) The same applied for Jill's night out at the casino. Again, this had nothing to do with the joint purposes of the marriage but was merely a night out for Jill's own personal pleasure and Jill was obligated to pay this debt fully without any contribution from Jack;



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(c) The Fiji holiday was for both of them and, as such, was held to be a relationship debt and this would have to be paid by both Jack and Jill equally;

(d) Finally the business investment is an interesting issue. Jill's solicitor argued, of course, that the property investment was Jack's personal responsibility because it was taken out in his personal name. However, the acquisition of the property investment was undertaken while the parties were still together and, therefore, came within the definition of relationship property. As such, any debt undertaken for acquiring and maintaining relationship property comes

within the definition of "relationship debt". Therefore, the debt due back to Jack's parents was to be paid equally by Jack and Jill.

To conclude, you cannot presume that a debt at the date of separation would be shared equally by the parties. One must look at the intention of the debt. Unless it was incurred for the joint purposes of the marriage or relationship, then it will be the other party's personal debt and, therefore, their full responsibility.

- **The next newsletter covers the topic of Unanimous Trustee Decisions—by Paul May**

As a result of our newsletter announcing the resignation of Paul May from the Partnership last week, we have had a number of queries from people wondering what is to happen in relation to their Independent Trustee (usually CMS Trustees Limited) of their Trusts.

CMS Trustees Limited and any other Independent Trustee company that we have formed will continue to operate for all existing clients.

There will be no change to the signing authority arrangements for those Independent Trustee companies.

Therefore, there will be no need to change your Trustee and the signing of documents by that Independent Trustee will be done in exactly the same way as previously.